

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

R. MICHAEL BEST <i>et al.</i> ,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	No. 1:14-cv-00922-CCC
v.	:	
	:	Chief Judge Christopher C. Conner
US FOODS, INC. <i>et al.</i> ,	:	
	:	Jury Trial Demanded
Defendants.	:	

**DEFENDANT US FOODS, INC.'S
(IMPROPERLY SUED AS US FOODS INC. DELAWARE DIVISION)
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant US Foods, Inc. ("US Foods"), improperly sued as US Foods Inc. Delaware Division, moves this Court to dismiss the Plaintiffs' Complaint (ECF No. 1), pursuant to Federal Rules of Civil Procedure 8, 12(b)(1), 12(b)(6), and 41(b), and avers as follows:

1. Plaintiffs R. Michael Best, Keith Dougherty, and Docson Consulting LLC (SMLLC) filed a *pro se* Complaint against eight Defendants, which include US Foods, Cluck U Corp., JP Haddad, Richard Daniels, the Cumberland County Sheriff's Department, the Cumberland County Prothonotary, Judge Kevin Hess of the Court of Common Pleas of Cumberland County, and Judge Bruce Bratton of the Court of Common Pleas of Dauphin County.

2. Plaintiffs' Complaint appears to allege five counts: (1) a RICO claim against all Defendants; (2) a claim based on constitutional violations of the Fifth

and Sixth Amendments against all Defendants; (3) a claim for treble damages against all Defendants; (4) a claim for a preliminary and permanent injunction against Judge Kevin Hess; and (5) a claim for a preliminary and permanent injunction against Judge Bruce Bratton.

3. Plaintiffs' Complaint should be dismissed in its entirety for three reasons.¹ First, Plaintiffs' Complaint fails to comply with Federal Rule of Civil Procedure 8, which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8; *see also* Fed. R. Civ. P. 41(b). As this Court has held in dismissing some of the Plaintiffs' prior complaints, "dismissal under Rule 8 is proper when a complaint 'left the defendants having to guess what of the many things discussed constituted a cause of action;' or when the complaint is so 'rambling and unclear' as to defy response." *Dougherty v. Advanced Wings, LLC*, No. 13-cv-447, 2013 WL 4041589, at *7 (M.D. Pa. Aug. 7, 2013) (citations omitted); *accord In re Dougherty*, --- Fed. App'x ----, 2014 WL 1347003, at *1-2 (3d Cir. Apr. 7, 2014) (affirming dismissal, and finding plaintiffs' "complaints in these actions are largely unintelligible").

4. Second, Plaintiffs' Complaint lacks subject-matter jurisdiction because it alleges no Article III case or controversy against US Foods. Fed. R.

¹ To the extent Maryland Close Corp (S Corp) (Director) of Ken & Jim CUC Inc. Wholly owned subsidiary of CUC of MD Inc. is an individual Plaintiff, as shown on the CM/ECF Civil Docket, US Foods also moves to dismiss its claims.

Civ. P. 12(b)(1). Plaintiffs' Complaint fails to allege the three constitutional elements of standing: (1) an "injury in fact," which requires an injury that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant"; and (3) "a showing that it 'be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *N.J. Physicians, Inc. v. President of United States*, 653 F.3d 234, 238 (3d Cir. 2011) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

5. Third, Plaintiffs' Complaint fails to state any claim upon which relief can be granted against US Foods. Fed. R. Civ. P. 12(b)(6). Count I does not allege the essential elements of a RICO claim. *See Lum v. Bank of Am.*, 361 F.3d 217, 223 (3d Cir. 2004). Count II fails to state any legally cognizable claim against US Foods based on constitutional violations of the Fifth and Sixth Amendments. *See Parratt v. Taylor*, 451 U.S. 527 (1981); *Kost v. Kozakiewicz*, 1 F.3d 176, 184 (3d Cir. 1993). Count III merely alleges "treble damages related to the unlawful 'writ of garnishment,'" *see* Pls.' Compl. 18, ¶ 38, which is not a cause of action and appears to request only a form of relief. *Hartman v. Wilkes-Barre Gen. Hosp.*, 237 F. Supp. 2d 552, 556 (M.D. Pa. 2002).

6. Moreover, Plaintiff Docson Consulting LLC (SMLLC)'s claims should be dismissed because a corporation may appear in the federal courts only through licensed counsel. *Dougherty v. Snyder*, 469 Fed. App'x 71, 72 (3d Cir. 2012); *see also* Fed. R. Civ. P. 41(b). To the extent Keith Dougherty, who is a *pro se* litigant and not an attorney, purports to file the Complaint on behalf of any other Plaintiffs named in the caption, their claims should be dismissed on the same ground. *See id.*

WHEREFORE, for these reasons, and for the reasons set forth in the Brief in Support of Motion to Dismiss, which will be filed 14 days after this motion pursuant to LR 7.5, Defendant US Foods, Inc. respectfully requests that this Court dismiss the Plaintiffs' Complaint with prejudice, tax all costs and fees to Plaintiffs, and provide any other just and proper relief.

Dated: June 4, 2014

Respectfully submitted,

By: /s/ Joseph M. Cincotta

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US Foods Inc. Delaware Division

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CERTIFICATE OF SERVICE

The undersigned attorney certifies on June 4, 2014, Defendant, US Foods, Inc.'s (improperly sued as US Foods Inc. Delaware Division) Motion to Dismiss Plaintiffs' Complaint, and accompanying Order and Certification of Non-Concurrence were filed with the Clerk of the Court for the United States District Court for the Middle District of Pennsylvania using the CM/ECF system, which will send notification of such filing upon all parties who have appeared, and were served via first-class mail by depositing them in a United States post office box in Philadelphia, Pennsylvania, enclosed in an envelope, plainly addressed with postage fully prepaid to the following:

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Judge Kevin A. Hess, and the
Honorable Bruce F. Bratton)*

Dated: June 4, 2014

Respectfully submitted,

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